
APPENDIX D

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BABBITT'S ROLE KEY IN BID TO SOLVE WATER ISSUES

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As governor, Bruce Babbitt showed remarkable leadership and perseverance in forging a comprehensive groundwater management act that yet today governs much of the way Arizona grows and develops.

As secretary of the Interior, Babbitt is about to take action that many fear will at least unduly complicate the most important state water-policy negotiations since the groundwater management act, if not blow them up altogether.

Comprehensive negotiations are under way addressing three broad issues: what the state has to pay to reimburse the federal government for the construction of the Central Arizona Project, surface water claims by various Indian tribes and funding Indian water costs.

Settling these issues is a daunting task, requiring agreement by all the parties, both federal and state legislation, and the approval of three courts. But failure means protracted litigation with an uncertain outcome.

As a result, all parties have a strong interest in making the settlement a success -- the Department of Interior, the Arizona Department of Water Resources, the Central Arizona Water Conservation District (which manages the CAP), state water users, the tribes, and U.S. Sen. Jon Kyl, who is playing a key role in facilitating the negotiations.

Although success remains a rocky path, the outlines of a settlement are beginning to take shape, and the parties are cautiously optimistic. Basically, it involves using CAP water to resolve Indian water claims, and somehow using CAP water sales and repayments to reduce what Congress has to fund for Indian water costs.

The key is the use of CAP water to satisfy Indian water claims, and therein lies the problem with Babbitt's proposed action.

Babbitt asserts the right to reallocate approximately 340,000 acre-feet of CAP water to the Indians. State water interests dispute, with varying degrees of confidence, the secretary's right, without a settlement, to reallocate a single drop. At present, settlement discussions include using about 200,000 acre-feet to resolve Indian claims.

Babbitt has told state water leaders that he plans on publishing a notice initiating the environmental studies that reallocation requires. Interior says the environmental studies need to get started so they can be completed prior to congressional action on the settlement.

Many state water leaders see the proposed action as a threat, a not-so-subtle reminder of the power Babbitt asserts and which they dispute, and an attempt to gain leverage in the negotiations.

The action, which may come early next week, is sure to complicate already fragile negotiations. It opens up another front in

an already excessively complicated battlefield.

Exactly why Babbitt is proceeding to the obvious discomfort of Arizona water interests is unclear. The public rationale, the need to get started with environmental studies to facilitate a settlement, is thin.

Everyone agrees that a global settlement needs to be reached by September, or the opportunity likely will be lost in the grinding momentum of existing litigation and the difficulty of getting on Congress' agenda next year. A two- or three-month delay in starting environmental studies would not appear to cause any irremediable harm.

Nor does Babbitt need to do anything to make his threat of a unilateral reallocation real. No one doubts that if settlement fails, Babbitt will act.

Some have suggested that Babbitt's action is ego-driven, that he wants to be the one who actually signs the allocation order conveying water to the Indians, and fears that if he doesn't begin the process now, time may run out before his term ends.

But it would be unlike Babbitt to let his ego get in the way of a substantive accomplishment he cares about. Besides, if the reallocation comes from a settlement he negotiates, or from executive action he initiates, he will get ample credit.

Perhaps Babbitt remembers how useful the threat to the CAP from the Carter administration was in making the groundwater act happen. But then you had parties who didn't really want to settle, and needed an outside threat to come together. Today, you have parties who want to settle, but aren't yet certain that it can be done.

Let's hope Babbitt doesn't overplay his hand.

Memo: Robert Robb can be reached at (602) 444-8472 or at bob.robbs@pni.com via e-mail. His column generally appears on Sundays, Wednesdays and Fridays.

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Proposal would take farms' water

Federal plan to
settle Indian claims;
CG meeting set

By LOUIS PORTER
Staff Writer

The U.S. Bureau of Reclamation will hold a "scoping meeting" Wednesday near Casa Grande to solicit comments on a proposal that would reallocate 200,000 acre-feet of Central Arizona Project water.

The Federal Register of Aug. 26 outlines the proposal and three alternatives that aim to settle litigation by the Gila River Indian Community dating back, in some cases, to 1972.

In a major change for the use of Colorado River water that has flowed into Pinal County, the proposed action would take 200,000 acre-feet that is currently allocated for non-Indian agriculture and reallocate it for "federal purposes." It would also take 17,000 acre-feet from the municipal and industrial use category "previously allocated to Asarco Inc. that is anticipated to be voluntarily assigned to GRIC..."

Under present conditions, 341,098 acre-feet is allocated to non-Indian agriculture. This would be reduced to 141,098 by the proposed action.

"Of the estimated 141,098 acre-feet remaining in the NIA category, 97,444 acre-feet would be reserved for use by non-Indian agriculture or

M&I (municipal and industrial) entities under a process to be developed. The remaining 43,654 acre-feet represents the water associated with HIDD (Hohokam Irrigation and Drainage District) that has been or is anticipated to be assigned to several Maricopa County cities."

The 200,000 acre-feet would be added to the "held for federal purposes" category along with the 17,000 now allotted to Asarco. The Gila River tribe would get 102,000 acre-feet, the Tohono O'odham Nation 28,200, and 69,800 would be "reserved by the secretary (of Interior) for use in facilitating future Indian water rights settlements."

Alternative No. 1 makes small changes to the current allocation. The 17,000 acre-feet in the municipal and industrial category now allocated to Asarco would be placed into the "held for federal purposes" category. The rest of the water in the M&I category would be managed the same as in the main proposal. The amount of water in the NIA category would remain the same, but an estimated 112,578 acre-feet, an amount allocated in 1983 under this category but never contracted, would be "made available for use by non-Indian agricultural and/or M&I entities under a process to be developed." An estimated 1,518 acre-feet in the "held for federal purposes" category would be allocated and contracted to the Tonto Apache and Camp Verde Apache tribes.

Alternative No. 2 would take 65,647 acre-feet that is currently uncontracted from the M&I category and put it into the "held for federal purposes" category. Water allocated for NIA use would be reduced by 28,665 acre-feet, an amount currently allocated to Queen Creek Irrigation District, Chandler Heights Citrus ID, San Tan ID and Tonopah ID.

This alternative would do the same as Alternative No. 1 with the uncontracted 112,578 acre-feet of NIA water. The "held for federal purposes" category would increase by an estimated 94,312 acre-feet. The register says "the 65,647 acre-feet from the M&I category would be contracted as follows: 20,000 to the Gila River tribe; 28,200 to Tohono O'odham Nation; 3,947 to the San Carlos tribe; and 13,500 to the Navajo and Hopi tribes.

The estimated 28,665 acre-feet from the NIA category would be contracted as follows: 9,000 to Gila River; 19,665 to San Carlos. This alternative would also allocate, as would Alternative No. 1, 1,518 to the Tonto Apache and Camp Verde Apache tribes.

Under Alternative No. 3, non-Indian agricultural water would be reduced by an estimated 297,444 acre-feet. This is by far the most drastic change of the four proposals to allocation in the NIA category.

Alternative No. 3 would make the same changes to water in the M&I category as Alternative No. 2. Water "held for federal purposes" would increase by 289,091. This includes the 17,000 acre-feet predicted to be voluntarily reallocated from Asarco to Gila River. The 65,647 acre-feet from the M&I category would be contracted as under Alternative No. 2. An estimated 82,000 acre-feet from the NIA category would be contracted to Gila River. An estimated 124,444 acre-feet would be "reserved by the secretary for future federal purposes."

The Tonto Apache and Camp Verde Apache tribes would get 1,518 acre-feet. The remaining 91,000 "would be reserved by the secretary for as yet to be determined non-federal users."

The meeting will begin at 6:30 p.m. Wednesday at Francisco Grande Resort & Golf Club.

Turn Out to Protect Your Water Rights

**Wednesday, Sept. 15 - 6:30 p.m.
Francisco Grande Resort & Golf Club Ballroom**

the United States Department of the Interior is holding a public comment meeting. The purpose of the meeting, as published in the Federal Register on Aug. 26 is the

proposed taking of our Central Arizona Project water supply that we now have as a right and under contract.

They propose the transferring of that right and that contract to the various Indian Tribes in Central Arizona.

**Farmland That Has
Been In Production
For Generations
And Generations
Could Disappear Under This Plan!**



Editorial

Drying up Pinal: a crucial decision

The complex set of laws and regulations involving the Central Arizona Project face a new twist as an effort is made to use Colorado River water to settle federal water-rights claims by the Gila River Indian Community and other tribes. The U.S. government obviously has a substantial obligation there, but Pinal County should not bear the brunt of rectifying the situation.

The tribe initially received a substantial CAP entitlement and always has had half of the San Carlos Project water. Yet rights to more water are apparent under federal law, and thus the recent plan to take it from contracted CAP users.

Pinal and other Arizona residents had hoped for year to gain a share of the Colorado River, which the U.S. Supreme Court ruled rightfully belongs to the state. When Congress authorized the huge reclamation project, farmers, many of them in Pinal County, committed to repay a substantial part of the cost and borrowed millions of dollars to build distribution systems. They and all Pinal County property owners have paid taxes for many years toward repayment of the CAP cost.

Water has been flowing into Pinal County for more than 10 years and its full cost is well above what agricultural markets can support. A plan has been devised to sell water at more affordable rates, and this - temporarily at least - has allowed the state to use all its allocation.

Meanwhile, two major issues have gone unresolved. One is the Gila River tribe's water claims. The other is that the federal government has not reached a settlement with the state for the final cost of the CAP to be repaid. An understanding on the latter issue was ignored at the last minute by Interior Secretary Bruce Babbitt, a former Arizona governor, who wanted further negotiations.

Now a plan has been hatched that would reduce farmers' cost of water and debt in return for a dear price: giving up rights to CAP water so that Gila River claims can be settled. The water would stay in Pinal County temporarily and the exact time frame would be unknown. Two hundred thousand acre-feet would be held for tribal use, most of it taken from Pinal County. The water, probably more than the tribes could ever use, might very well be sold to non-Indian users inside or outside Arizona.

The big beneficiaries would be Maricopa County interests, including the Salt River Project, who would like to get the claims off their backs. The losers would be not only Pinal County farmers but all residents with a stake in the county's economy, because of the importance of agriculture and also the need for the water to support future development.

A meeting will be held by the Interior Department at 6:30 p.m. Wednesday of this week at Francisco Grande Resort & Golf Club's ballroom. The purpose of the meeting is to gather views on the proposed "taking" of the water from contracted users, as published in the Federal Register on Aug. 26.

Anyone with an interest in preventing this proposed dry-up of a large part of Pinal County should attend and write to U.S. senators, congressmen and the governor. The contracted water should not be stolen from Pinal County landowners and residents.

(Reprinted with permission from Casa Grande Valley Newspapers Inc.)

Statement from John C. Smith, farmer since 1951 in Maricopa and former president of the Maricopa-Stanfield Irrigation District.

In 1983, the Districts entered into a 50-year water supply contract with Central Arizona Water Conservation District and the United States. Under the terms of that contract, Maricopa-Stanfield Irrigation & Drainage District was to receive 20.5% of the non-Indian agriculture pool which at that time was 550,000 acre feet. Based on that contract, we then entered into a contract with the United States for construction of a distribution system at a cost of \$97 million of which we were required to contribute 20% or \$26.5 million up front - the sole purpose of which was the delivery of C.A.P. water to the lands of Pinal County.

In reliance on this contracted right and the re-affirmation of the law, as well as the contract with the U.S., landowners in the Maricopa-Stanfield District expended additional tens of millions of dollars in irrigation district taxes, conservation practices, Hoover energy surcharges and the great cost of planting permanent crops. We leased our wells and water rights to the district and built an economy based on Central Arizona Project Water. Every phase of that economy will be adversely affected or destroyed on the taking of this water and ultimately, most of Pinal County will return to desert.

The transfer of this water to solve Maricopa County's water rights problems and other social problems is a violation of our sub-contract as well as the C.A.P. Act itself. No Central Arizona Indian Tribe has "Winter's Rights" to the waters of the Colorado River.

The landowners have honored their contracts with the U.S. Bureau of Reclamation, the State of Arizona and with the bond holders. We have put to beneficial use, and paid our share and more, of the C.A.P. Most of us expect the United States to honor their contract with us.

Non-Indian agriculture has saved the United States and the State of Arizona from national embarrassment by using over 900,000 acre feet of C.A.P. water in 1998. Had we not stepped up to the plate, the majority of Central Arizona's Colorado River entitlement would have flowed into California, into Mexico or into the Gulf of California.

The following page is a continuation of this page.

Silence Will Be Considered by the Bureau as Constituting Your Consent to This
Raid on the Non-Indian Agriculture Water Supply.

**For the Future Assured Growth of Pinal County,
Let's Keep Our Contracted Water Supply -
For the Benefit of All Central Pinal Citizens.**

**Attend the Only Meeting in Pinal County on
Wednesday, Sept. 15 - 6:30 p.m.**

PLUS CALL OR WRITE THESE ELECTED OFFICIALS NOW!

REP. J.D. HAYWORTH, R-6th District
Casa Grande:
408 N. Sacaton St., Suite DD
Casa Grande, Ariz. 85222
520-876-4095
fax: 876-4096

REP. ED PASTOR, D-2nd District
2465 Rayburn House Office Building
Washington, D.C. 20515
602-256-0551

SEN. JON KYL, R-Ariz.
Tucson:
7315 N. Oracle Road, Suite 2200
Tucson, Ariz. 85704
520-575-8633

SEN. JOHN MCCAIN, R-Ariz.
Mesa:
1839 S. Alma School Road, Suite 375
Mesa, Ariz. 85210
480-491-4300

GOV. JANE HULL
1700 W. Washington
Phoenix, Ariz. 85007
1-800-253-0883

Join Us As Well As Other Concerned Citizens And Organizations

New Magma Irrigation & Drainage District

Kathy Aleman
Bob Barcello
Vince Dobson

Max Koepnick
Ed Nevitt
Le Smith

Jim Wales

Electrical District #5

Sam Smith, president
Gale Pearce
Norm Pretzer

Bill Wohlecke
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THE ARIZONA REPUBLIC

September 15, 1999

CAP TO OFFER PLAN TO PAY FEDERAL BILL

WOULD CUT DEBT BY \$700 MILLION

Author: Shaun McKinnon, The Arizona Republic

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Article Text:

Arizona taxpayers would owe about \$700 million less on the massive Central Arizona Project Canal, but would give up almost half the project's water under a proposed agreement to be announced today.

The Central Arizona Water Conservation District, which runs the 336-mile canal, will propose a settlement today that would reduce the amount of money the state must repay the U.S. Bureau of Reclamation for building the \$4.7 billion water-delivery system.

In return, the state would hand over enough water to federal officials, perhaps 200,000 acre-feet a year, to help settle claims by Indian tribes that they are entitled to a larger share of the Colorado River.

"We've been going back and forth on this for almost five years now," district board President George Renner said Tuesday. "It's probably time to stop."

The deal needs approval from the Central Arizona Project's locally elected 15-member governing board. It would have to get approval from two federal agencies before it was submitted to a federal judge in Phoenix for final review.

Even then, because the repayment agreement hinges both on settlement of Indian water claims and a final plan to divide the state's share of the Colorado River, a snag in those talks could halt the whole process.

Still, this is the closest the state and federal governments have come to ending the dispute.

For taxpayers in Maricopa, Pinal and Pima counties, the agreement could mean lower property taxes. The water district collects 10 cents per \$100 valuation in those three counties to help pay Arizona's share of the project cost.

District Manager Sid Wilson said the board would decide later how the lower repayment would affect tax rates and whether the state would try to pay off the debt sooner or spread it over 50 years.

What the water district will propose today would directly settle only the financial issues surrounding the CAP, which carries water from Parker Dam on the Colorado River to central and southern Arizona. The canal is why the Phoenix and Tucson areas can continue to grow in a desert environment without the threat of imminent drought.

Under the proposal, Arizona would repay \$1.65 billion of the nearly \$4.7 billion the Bureau of Reclamation spent on the project. Federal officials had claimed that Arizona owed about \$2.33 billion, but the state argued that it was not obligated for federal cost overruns that occurred after the repayment contract was signed.

A federal judge already has ruled that Arizona would not have to pay more than \$1.78 billion.

The state also would receive a \$300 million credit for delivering water to Indian reservations without charging the federal

government for its operating and maintenance costs.

In return, the state would agree to let the federal government take about 200,000 acre-feet a year in water that has been set aside for agricultural uses but not yet claimed by anyone. That water would be used to settle claims by the Gila River Indian Community, the Tohono O'odham Nation and several other tribes.

Renner and Wilson emphasized that the water district is not attempting to settle the Indian claims, which are under review by the federal government and the state Department of Water Resources.

As it happens, the Bureau of Reclamation is holding public hearings this week in Arizona on its proposal to reallocate CAP water for tribal water claims. Interior Secretary Bruce Babbitt pressed ahead with the hearings in an attempt, agency officials said, to speed the process once a settlement is reached.

Some state officials saw Babbitt's move as a not-so-veiled threat to make good on his authority to reallocate CAP water without seeking approval from the water conservation district.

Renner said the pending settlement gives the state its own bargaining position.

"This will put additional pressure on the U.S. to negotiate in good faith on the Indian claims," he said. "They're going to have a chance to get water, to settle the claims and to settle a financial dispute that frankly they're losing in court."

David Hayes, the Interior Department's chief water negotiator, declined Tuesday to comment on the specifics of the proposed settlement, but said there appeared to be a potential framework for a deal.

"There is a lot of effort going into this," he said, "but there is not going to be a deal unless it's in the best interest of state parties and the best interest of the tribes and the other parties involved."

One issue that could get sticky on the federal side is the state's demand that the federal government take no more than 665,224 acre-feet of water from the CAP Canal. That amount is about 44 percent of the 1.5 million acre-feet maximum that runs through the system each year.

Federal officials say they don't anticipate needing more than the extra 200,000 acre-feet included in the district's proposal, but negotiators also don't want their hands tied.

Arizona officials, however, don't want the federal government to keep an open tap on CAP water.

Rita Pearson, director of the state Department of Water Resources, said she wasn't prepared to comment on the proposal, but said a repayment settlement could help build a bridge to a final resolution of the tribal disputes.

"It's definitely an encouraging sign," she said. "I'm looking forward to what the (water district) board's reaction is to the proposal. There may yet be issues we don't anticipate."

The board will hear public comment on the proposal Sept. 23, and could vote on it as early as Oct. 7. From there, the district would file the proposal with U.S. District Judge Earl Carroll, who is presiding over the state's suit against the federal government in the repayment issue.

Although the district's settlement would not directly address the allocation of CAP water, one of its key conditions would allow the federal government to take an additional 200,000 acre-feet a year of unclaimed water.

Farmers and developers in Pinal County already are lining up to oppose any efforts to give away water set aside for agriculture. Both groups fear they could wind up paying premiums to the tribes for water they once could have used at bargain rates.

Queen Creek Mayor Mark Schnepf, who is also a farmer in Pinal County, said taking water from farmers could depress an already troubled industry.

"To give away available water is going to create an even greater hardship, which in turn will cause problems for (the) farming economy," he said. "Queen Creek is becoming more of a bedroom community, but agriculture is still a very important part of our local economy."

Graphic:
Color map by The Arizona Republic
Chart

Caption:
CAP Canal
FYI

Key points of proposal in CAP repayment

Highlights of a proposal by the Central Arizona Water Conservation District to settle a dispute over payments to the federal government for the Central Arizona Project Canal:

- * Over time, Arizona would repay the federal government \$1.65 billion, a reduction from the \$2.33 billion federal officials sought and the state's initial estimate of \$1.78 billion.

- * The state would receive a \$300 million credit in exchange for delivering water to Indian tribes without charging the federal government any operating and maintenance costs.

- * The state would receive credit for payments already made on the project. The settlement would include several major conditions: * Arizona would agree to a division of CAP water providing federal officials with a total of 665,224 acre-feet per year, an increase of 200,000 acre-feet that had been set aside for agricultural use. An acre-foot is 326,000 gallons. * Federal and state officials would settle the remaining Indian water disputes within one year, or the water district would have the right to back out of the agreement.

The district board will hear public comment on the proposal Sept. 23 and could vote on it as soon as Oct. 7.

Memo: Shaun McKinnon can be reached at (602) 444-7116 or atshaun.mckinnon@pni.com.

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Big division over water proposals

Gila River tribe in favor; farmers take other side

By LOUIS PORTER
Staff Writer

More than 150 people packed the ballroom of Francisco Grande Resort Wednesday night as some expressed their concerns regarding a U.S. Bureau of Reclamation proposal that could reallocate 200,000 acre-feet of Central Arizona Project water.

About 20 people spoke to three bureau administrators, drawing applause and occasional laughter from the standing-room-only crowd. Farmers, irrigation district managers and members of the Gila River Indian Community and Tohono O'odham Nation spoke.

The main purpose of the proposal is to settle a water rights dispute that has been running since 1972, when the Gila

• District manager outlines views on various proposals, P. 4

River tribe sued users of irrigated land in Central Arizona over loss of Salt and Gila River water. Those rivers had traditionally supplied their home-

land with irrigation waters but were dammed up and diverted into irrigation systems outside the reservation. Meanwhile, various water interests have been seeking a negotiated settlement (related story).

Robert Barcello, president of New Magma Irrigation and Drainage District, said the district had been recovering from a bankruptcy filing caused by bank foreclosures on its farms. He said the district restructured its debt, now \$18,224,000 on its distribution system, which was built specifically to carry CAP water from the Colorado River.

He said that if the proposal passed, in 20 or 30 years "farmers would have the choice of using groundwater or going out of business and going out of business would mean going back to tumbleweeds." He said the scheduling of the scoping meetings was premature because there has been no settlement on the agricultural side and that the proposal was illegal according to the Colorado Basin Act.

Grant Ward, general manager for Maricopa-Stanfield Irrigation and Drainage District, read a prepared statement, outlining positions on the various proposals. He said that his district's landowners have a right to decide on any changes in water allocations for which they have contracted. MSIDD used about 160,000 acre feet of CAP water in 1998.

Paul Orme, general counsel for MSIDD and for the Central Arizona Irrigation and Drainage District, echoed Ward's sentiment and said, "Alternative No. 3 constitutes an entirely illegal and unconstitutional taking and merits no serious consideration. Alternative No. 3 would render the CAIDD subcontract completely illusory..." That alternative would reallocate almost 300,000 acre feet, removing it from the non-Indian agriculture category and placing it under federal control.

CAIDD used about 130,000 acre feet of CAP water in 1998.

Cecil Antone, lieutenant governor of the Gila River community, said he supported the Proposed Action and Alternative 3, which would transfer rights to a large amount of CAP water for tribal use. He said Pinal County water users should support the proposal in order to avoid "continued and protracted extensive litigation for all parties."

Rod Lewis, general council for the tribe, said Alternative No. 3 is "both legal and constitutional."

He said the proposal "legally is in the best interest of both Indians and non-Indians alike. It is a fair and reasonable allocation of water. It will resolve disputes and litigation that could linger on for years, costing all of us great amounts of money in attorneys' fees and court costs."

Norman Pretzer said, "I'm a farmer; I've lived south of Eloy on the family farm since 1936. I think that the reason for all of us being here is that this is one of the most outrageous miscarriages of justice that we've ever seen. I'm almost ashamed to have to stand here and talk to the citizens of Pinal County when myself and other people have worked so hard, for so many years, to get CAP water into this area. It's a damned shame that we're even here tonight."

"What we're talking about tonight is a giant shell game. If you take the water from Pinal County, it dries up — that's the EIS (environmental impact statement). You give it to the Gila River Indians, they in turn lease it to Maricopa County cities for money. I guarantee you that within ten or 15 years, if this thing goes forward, the Indians will be leasing water to Nevada and California. Water will go to the highest bidder. People that have depended on this water for generations will lose it."

Albert Soatkee said, "I'm a member of the Gila River Indian Community, and my family has been here for 4,500 years, farming. I'm also a member of Pinal County. I graduated from Casa Grande Union High School, participated in sports events, participated in social activities, yet I come here and I'm an Indian. What is all this divisiveness about? You don't want Nevada to have the water, you don't want Mexico to have the water, you don't want California to have the water, you don't want the feds to have the water, yet you have no solutions, nothing. I don't hear any positive solutions. We have talks about bloody wars and 'over my dead body.' You've been here 62 years. We've been here over 62 generations. And we're willing to work with you. We are proposing solutions. We are willing to work within the system.

"We didn't create the situation, we didn't dam up the Gila River. There was a time when the Gila River Indian Community used to ship 4,500 tons of agricultural products to Phoenix every year. And through short sightedness, maybe even ethnic cleansing, we decided to dam up the river. All I know is that if we are not going to work together we will all go down."

Mary Thomas, Gila River tribal governor said, "We were a dry nation when our water was cut. So we know how it feels when it goes away. Our lands virtually became dust bowls. We still eke out a living. We need your support and you need ours. I think I was portrayed tonight as a heartless person, that we will not help you, not help our county. On the contrary, we've been there, and I don't think we're going to let it happen. I'm sure as long as I breathe and my heart beats I would never let that happen."

Bruce Ellis of the Bureau of Reclamation said a scoping report would be available in late October. A draft EIS will be available in June 2000, and the final EIS should come out in November 2000, he said.

State urges settlement to long feud

By MICHELLE RUSHLO
Associated Press Writer

PHOENIX — The Central Arizona Project offered to give the federal government some of its water in exchange for a reduction in taxpayer debt.

The offer is aimed at resolving a web of long-running water disputes across Arizona.

Three southern Arizona counties owe the federal government for construction of the 336-mile canal system that channels Colorado River water to the desert region. Property owners in those counties are repaying the debt through taxes.

Under the proposal announced Wednesday, those taxes and water rates could be reduced, provided that farmers are willing to give up some of their water to help settle claims by American Indian tribes.

For five years, the Central Arizona Project Conservation District, which governs CAP, has been locked in a dispute with the federal government over how much of the construction costs it has responsibility to repay.

The federal government said CAP owed \$2.3 billion when the project was completed in 1993, but the CAP district — which overlaps Maricopa, Pinal and Pima counties — argued it owed only \$1.78 billion.

Much of the dispute centered on whether the CAP district was responsible for cost overruns the Bureau of Reclamation incurred during construction. The bureau never asked Arizona officials whether they were willing to help foot the bill, said Robert Barrett, CAP district spokesman.

To resolve the repayment argument and other smaller issues, CAP officials sued the federal government. In November, U.S. District Judge Earl Carroll sided with CAP on the debt size, but other issues, such as toward how many related projects CAP is responsible to contribute money, remain in court.

To resolve them, the CAP conservation district has proposed that taxpayers be forced to repay only \$1.65 billion.

In exchange, up to 200,000 acre-feet of water a year — roughly the amount of CAP water used by Phoenix, Mesa and Scottsdale combined — would be given to federal officials to resolve separate water claims by Indian tribes.

The largest is by the Gila River Indian Community, which claims it should receive the water that upstream dams now capture and prevent from reaching it.

Rita Pearson, director of the Arizona Department of Water Resources, said that under current negotiations, officials believe the 200,000 acre-feet could settle the tribal claims.

The water allocation would be a combination of farm water and water that is currently not allotted for any use, she said.

Two-thirds of the pool would have to come from irrigation districts, primarily in Pinal County. The state is proposing the districts be compensated for their rights and any extra available water be sold to affected farmers at a discount.

Water should be available for the next 25 to 30 years, Pearson said, though farmers wouldn't have the guarantees the firm allotments offer.

Dave Iwanski, executive vice president of the Agri-Business Council of Arizona, said the irrigation districts he represents are willing to give up some water rights but want to be sure that they will be compensated.

If an agreement can be reached among the farmers, tribes and government agencies involved in the disputes, the debt repayment agreement could mean savings for taxpayers.

George Renner, president of the CAP board, said what those savings would amount to and how taxpayers

would see them are details that haven't been resolved.

But reaching an agreement would give the CAP district a clear idea what it must pay and allow it to plan for the future, he said.

Property owners now pay roughly 10 cents per \$100 of assessed values toward the CAP debt or \$10 a year for a \$100,000 house.

That rate could be reduced or the debt repaid faster once a settlement is reached, Renner said.

CAP could also reduce what it charges individual utilities for water, though that makes up just a fraction of an average water bill and there is no guarantee it would be passed on.

Renner said he is optimistic that a deal can be reached soon.

Still, David J. Hayes, acting deputy director of the Department of Interior, said significant issues remain. The large Indian claims and other issues, such as the federal government's right to buy water on the open market, need to be resolved.

"If the state departments really want to do a deal, we should be able to work this out," he said.

Comments on water proposals

CASA GRANDE DISPATCH September 16, 1999

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Editor's note: The following comments were prepared for delivery by Grant Ward, general manager of the Maricopa-Stanfield Irrigation and Drainage District, at a U.S. Bureau of Reclamation "scoping meeting" regarding water rights and the Central Arizona Project, which was held Wednesday night at Francisco Grande Resort & Golf Club.

Maricopa-Stanfield Irrigation and Drainage District consists of approximately 87,000 acres of irrigable lands and has historically been the largest user of Central Arizona Project water. MSIDD is a party to a water supply subcontract with the United States and the Central Arizona Water Conservation District, which contract implemented the previous and original CAP Secretarial Allocation Decision of March 24, 1983. In that decision, the secretary allocated 20.48 percent of the non-Indian CAP agricultural water supply to MSIDD. This contract remains in effect today but could be substantially modified by several of the alternatives contemplated in the notice of scoping process recently published at 64 Fed. Reg. 46720-22.

The Proposed Action is presumably based on those settlement discussions which revolve around the current litigation between CAWCD and the United States over CAP operation and repayment issues and Indian water rights claims. ...

— Irrigation district General Manager Grant Ward

It should also be noted that the secretary has never completed the required reallocation of uncontracted non-Indian agricultural water as mandated under Section 4.13 of the above referenced water supply subcontract, and by Congress, in Section 11 (b) of the Salt River Pima Maricopa Indian Community Water Rights Settlement Act of 1988. While several of the proposed alternatives in the Scoping Notice contemplate the completion of this

process it is important to note that any reallocation efforts contrary to existing NIA subcontracts are in violation of existing contract and law. The scoping process must identify the rights of MSIDD and properly analyze the impacts on such rights of the proposed alternatives.

The Proposed Action is presumably based on those settlement discussions which revolve around the current litigation between CAWCD and the United States over CAP operation and repayment issues and Indian water rights claims. MSIDD has been an active participant in these discussions and has set forth certain minimum conditions to a final settlement which would have to be in place before the MSIDD Board of Directors would refer the final settlement proposal to its landowners for an advisory election. The MSIDD Board of Directors believes such an election is necessary to in

any way modify or alter its rights and obligations under its subcontract since this same subcontract was entered into on the basis of an authorizing landowner election. However, the MSIDD Board of Directors will only submit a settlement proposal to its landowners which it believes is in the best interest of its landowners and water users.

The secretary of Interior believes he has the authority to reallocate CAP water without the consent of the district and its landowners. The district has vehemently disputed this position and has participated in these discussions in order to determine if an ultimate resolution could be developed which would benefit all district landowners and water users. Consequently the Proposed Action cannot be adequately evaluated since it does not address the key issues set forth by the MSIDD representatives in the settlement discussion.

Alternative No. 1 would reallocate the 65,647 acre-feet of uncontracted municipal and industrial CAP water to Arizona municipalities based on the Arizona Department of Water Resource's recommendation. MSIDD strongly believes this is the only appropriate approach for dealing with this water supply. This alternative would also reallocate 112,578 acre-feet of non-Indian agricultural CAP water that is currently not under contract to existing non-Indian contractors or to certain municipalities based upon an undeveloped process.

It should be pointed out that Section 4.13 of the MSIDD subcontract and Section 11 (b) of the Salt River Pima Maricopa Indian Community Water Rights Settlement Act of 1988, only authorized such reallocation to existing non-Indian agricultural subcontractors. This may not preclude an agreement between those subcontractors and other state parties on a substitute reallocation recommendation but absent such an alternative recommendation, the secretary must comply with existing contractual and statutory requirements.

Alternative No. 2 would violate existing law. It would inappropriately reallocate the 65,647 acre-feet of municipal and industrial water to the United States for federal purposes contrary to the clear intent of the CAP enabling legislation and the well being of the state of Arizona. Additionally, the reallocation of 28,665 acre-feet of non-Indian agricultural water currently held under contract by four small irrigation districts, may not be reallocated for federal purposes unless that is the intended disposition of such water by the districts and they receive adequate compensation from the United States for such reallocations. Otherwise, any water currently under contract which is released must be reallocated to the non-Indian agricultural water users pursuant to Section 4.13 of the subcontract. Those portions of Alternative No. 2 which would reallocate the 112,578 acre-feet of currently uncontracted water to the existing non-Indian subcontractors, and retain the 199,855 acre-feet of water under the existing agricultural contracts, would comply with existing contract requirements and law.

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eration. Alternative No. 3 would render the MSIDD subcontract completely illusory if the secretary could unilaterally reallocate the water which was the underlying basis of the subcontract and the MSIDD federal repayment contract with the United States (contract No. 4-07-30-W0040). Such efforts would be contradictory of court decisions and fundamental provisions of general contract law. Any effort to implement Alternative No. 3 will be met with considerable opposition by MSIDD and many other parties in the state of Arizona and would result in years of expensive litigation for all parties concerned. Alternative No. 3 would deprive MSIDD of all value under its original CAP allocation which was the basis for its \$78 million repayment contract with the United States and its remaining \$13,500,000 private bondholder obligation. It would result in substantially more groundwater pumping within MSIDD boundaries and throughout the CAP service area. Local economies which have become dependent on this CAP supply for non-Indian users will suffer irreparably, and the entire purpose of the CAP will be undercut.

The secretary should also recognize his inherent conflict of interest

should he seek to abrogate contract rights of one group of federal contractors such as MSIDD, to further his trust responsibility to another group of federal contractors. He should consider the ruling in cases such as *United States vs. Windstar Corp.*, and *Orange Cove Irrigation District vs. United States* before doing so.

The No Action Alternative contemplates maintaining the status quo, presumably until such time as the CAP repayment litigation is resolved. Any effort to resolve or settle this litigation must be done in such a way as not to impair existing contract rights absent the agreement of the impacted parties.

Finally, these comments in no way reflect the concurrence of MSIDD that the water supply numbers for the non-Indian agricultural category, i.e. 341,098 acre-feet, are correct or that the 43,654 acre-feet attributable to assignment from Hohokam Irrigation and Drainage District to several Maricopa County cities is an accurate reflection of the amount of water which could legally be part of this transaction. A final resolution of these numbers may or may not be required depending on the ultimate disposition of this process.

Thank you for this opportunity to make these comments on behalf of the Board of Directors of the Maricopa-Stanfield Irrigation and Drainage District. We would reserve the right to submit additional comments prior to the closing date. Additionally, please include the district on the mailing list for all subsequent information pertaining to this process as provided for in the scoping notice.

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COMPENSATION TO FARMS URGED IN CAP DEAL

MONEY FOR WATER, GROUP SAYS

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Debt-laden farmers and irrigation districts should be compensated if they are forced to give up water from the Central Arizona Project to help settle disputes among the state, the federal government and Indian tribes, farming advocates said Wednesday.

Agricultural users would take the biggest hit under a proposal by the Central Arizona Water Conservation District to give federal officials more CAP water in return for reducing what the state owes the U.S. Bureau of Reclamation for building the 336-mile canal.

David Iwanski, executive vice president of the Agri-Business Council of Arizona, said farmers need a reliable and affordable source of water for at least 30 years. That way they can repay the money they borrowed to replace dwindling groundwater supplies with water from the CAP system.

"That water is absolutely critical for them so they can continue to farm and pay off their CAP debt," Iwanski said. "We think if there are accommodations made for water and debt relief, we can be a player in the settlement. But this is their livelihood we're talking about."

The water district proposed a settlement Wednesday to end a long and costly battle with the federal government over how much money taxpayers in three Arizona counties should pay toward the \$4.7 billion it cost to build the CAP.

Under the proposal, the state would contribute \$1.65 billion, about \$700 million less than what the federal government originally demanded. In exchange for accepting the lower amount, federal officials could take up to 200,000 acre-feet of water from the CAP to help settle claims by several Arizona Indian tribes.

Much of that water is now set aside for agricultural use. Although most of it hasn't yet been claimed, Iwanski said, giving it up would leave farmers and irrigation companies without a firm and affordable supply for growth or for dry years.

Many of those farmers went deep into debt to build systems that could handle CAP water, he said, complying with demands by the state that they curb their use of a dwindling groundwater supply.

The CAP system, which carries Colorado River water from the Parker Dam south to Maricopa, Pinal and Pima counties, was intended, in part, to reduce the state's dependence on groundwater and allow urban areas to grow without fear of long droughts. at debt."

The issue of how the CAP water is reallocated and how tribal claims are settled isn't actually a part of the water district proposal, which addresses only the repayment amount. But the deal would hinge on the government's ability to settle the

other issues and would include the provision to give up the water.

"It would let us all lay to rest issues that have been on the table for decades," said George Renner, president of the water district's 15-member elected governing board.

That board will get its first real look at the settlement and hear public comment next week in a hearing that could reopen some of the same issues that have killed similar agreements in the past.

George Campbell, a board member and a critic of previous settlement plans, said the public should understand that this proposal is not the final word. He isn't happy with the idea that the federal government could end up with almost half the 1.5 million acre-feet of water that the CAP delivers each year.

"The future of Arizona really is on the line," he said. "Look at the amount of water being taken from agriculture to the Indian column. How is this state going to survive?"

Campbell, a former Maricopa County Supervisor, said his anger is directed not toward the tribes, who say they are entitled to a bigger share of the water, but toward Interior Secretary Bruce Babbitt.

"Two other secretaries said they wouldn't take any more water from Arizona, and then this one comes in and does a complete flip-flop," he said. "All that water set aside for Arizona's future is being taken away."

Babbitt, a former Arizona governor, has repeatedly said he has the authority to reallocate CAP water without approval from the state Department of Water Resources. He has begun the process of settling Indian claims with public hearings this week on environmental issues.

Water district officials say by including the Indian claims in the repayment deal, Arizona not only would reduce its debt on the CAP, but would retain some control over water reallocation. The proposal would limit the federal government to no more than 665,224 acre-feet.

An acre-foot is about 326,000 gallons, enough to meet the annual needs of a family of five.

If the deal is accepted, the board would then turn its attention to such details as how to pass on the lower repayment costs to taxpayers. The district could lower its tax rate -- now 10 cents per \$100 valuation -- or could cut costs to water users.

The deal also faces scrutiny of the U.S. Interior and Justice departments and would have to be approved by a federal judge.

Any Indian water deals would need approval from Congress.

The Gila River Indian Community, which holds the rights to 173,100 acre-feet of water, would be first in line, along with the Tohono O'Odham Nation. Water left after those claims are settled would be used in talks with other tribes.

Graphic:

Map by The Arizona Republic (see microfilm)

Caption:

CAP canal

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